

SUPERIOR COURT OF NEW JERSEY**HUDSON VICINAGE**

CHAMBERS OF
FRANCIS B. SCHULTZ
JUDGE



WILLIAM J. BRENNAN COURTHOUSE
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Re: One Journal Square Partners Urban Renewal Co., LLC, et al v.
City of Jersey City et al - Docket No.: HUD-L-3888-18

Dear Counsel:

Please allow this letter to serve as the findings of the court in the above captioned OPRA matter.

The plaintiffs submitted several requests to the Clerk of the City of Jersey City seeking documents pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. The defendants did not comply with the request and an order to show cause followed. In its brief the plaintiffs contend that the documents sought were easily identifiable, were not overbroad and were not subject to any exception. The defendants contend that the document requests were overbroad and would have substantially interfered with agency operations. The court felt that based on the papers submitted it could not make a well grounded decision and therefore requested testimony. All of the requests were for documents related to tax abatements and similar accommodations.

The first witness was David Cook, an attorney and member of plaintiffs' law firm. He along with Mr. Sullivan of the firm were the ones who actually made the OPRA requests involved in this matter. He first discussed the document marked P-2 which was the initial OPRA request made by plaintiffs on June 26, 2018. He indicated that MEPT was a prior owner of One Journal Square, the same property owned by the plaintiffs and that KRE refers to property near One Journal Square, both entities being part of the same redevelopment area.

He indicated that in response to P-2 the City requested that he narrow down the request so it would be more specific as to the identity of the documents being sought. In response to that request by the City he testified that three separate requests were then made and they could be found in P-3, P-5 and P-9.

P-3 was also known as OPRA request #1 and made August 6, 2018. It had four parts. It referred to the property located at One Journal Square. It gave the block and lot number. It limited the time frame from January 1, 2008, going forward. The documents requested in part one are easily identifiable, do not require any research or discretion by the defendants and simply put are limited to one particular developer, MEPT for the property located at One Journal Square. Part two is limited to any other developer at that same location other than MEPT and seeks the same readily identifiable documents and for the same period of time. Part three simply asks for an already existing list and gives an example of the list that is being referred to. Part four simply asks for executive orders indicating the criteria used to approve RABS, PILOTS and other tax abatement and tax exemptions applicable to redevelopment areas in the City. It does appear that the plaintiffs did significantly reduce, clarify and identify the documents being sought in response to the defendants' initial request to do so.

P-5 also known as OPRA request #3 and sent on August 6, 2018 is similar to P-3 except it refers to another location specifically identified by its street address, 615 Pavonia Avenue and its block and lot number. It contains two parts. Once again, the court finds these documents to be readily identifiable and not requiring any "research" or discretion on the part of the custodian. It should be noted that the City indicated that it was conducting its search and requested more time in response to P-3 and P-5.

P-4 also known as OPRA request #2 initially sent August 6, 2018, involved requests for similar documents. It contained four parts. The first part was only in regard to the Journal Square 2060 Redevelopment Area from January 1, 2008 going forward. The second part asked for similar documents outside of the 2060 Redevelopment Area, but only if the project cost more than twenty million dollars. It also attached as an Exhibit A, a copy of an already existing list prepared by the City which included project costs. The third part asked for policies, procedures and memorandum concerning criteria to approve RABS, PILOTS, etc. The fourth part asked for ordinances and resolutions granting or denying the requests for those tax related accommodations. The City responded by asking for a narrower date range and narrower scope.

Not receiving a response, Mr. Cook then called the clerk on or about August 17, 2018 and left a voice mail. He waited five more days and got no return call and then eventually spoke to a deputy clerk Irene McNulty on August 21, 2018. He told Ms. McNulty he was following up regarding his OPRA requests. Ms. McNulty said in regard to OPRA request #2 she needed the ordinance numbers and helped Mr. Cook determine how to find, from the City's web site, the correct ordinance numbers. Ms. McNulty also indicated she would need the applicant's names and property addresses. Ms. McNulty asked for a shorter time frame, one that is less than ten years going backwards. Mr. Cook testified that a lot of what Ms. McNulty asked for was already contained within P-4 (OPRA request #2) especially regarding Exhibit A which shows the properties that cost more than twenty million dollars and has the block and lot numbers. It should be noted that Mr. Cook testified Ms. McNulty did not complain at all about OPRA

request #1 (regarding One Journal Square) and #3 (regarding 915 Pavonia Ave.). Mr. Cook testified that this was a good casual conversation with Ms. McNulty and that she never made any sort of reference to a disruption of her office. Mr. Cook then indicated that he revised OPRA request #2 and it became P-9. It was sent on September 11, 2018. P-9 went from ten years to only four years back in time. Mr. Cook referred to "Exhibit A" and indicated how it was very specific as it included the ordinance numbers, the street address and the name of the applicant. The witness testified that P-9 (the revised OPRA request #2) gave Ms. McNulty everything she wanted. He also testified that it referred to twenty-seven specific projects.

Mr. Cook testified that he did not get a response until P-10 sent September 12, 2018 which claimed that OPRA request #2, even as revised, was disruptive to agency operations. He testified that Ms. McNulty did not call him back since their August 21, 2018, phone call to try and resolve the matter or request more specific information. He said that nobody contacted his office regarding revised OPRA request #2 and all they received was a flat denial. He said regarding OPRA request #1 and OPRA request #3 the City had asked for two week extensions then an additional two weeks. He says he always agreed to the additional requests. He referred to P-6 and P-8 both being sent by the City on August 15, 2018 in this regard. Regarding OPRA request #1 he referred to P-11 sent August 29, 2018, which was the City's third request for more time to which he agreed. He got nothing in response until P-13 which was a flat denial. It was dated September 26, 2018 and it pertained to OPRA request #1 and OPRA request #3. He claims there was no attempt by the City as per the statute (apparently referring to the last sentence of N.J.S.A. 47:1A-5(g)) for a conference in order to reach a reasonable solution. He claims that all three OPRA requests were denied after waiting fifty-one days.

The next witness was Irene McNulty called by the defendants. She is a Deputy City Clerk and has worked there for more than fourteen years. She is certified as a municipal clerk by the state and supervises the OPRA requests and oversees ordinances and changes to the city code. She assists the public, maintains birth and death records and indicated that three quarters of her day involves OPRA requests. She says that she works eight hours a day, skips lunch sometimes, works late and this is usually due to OPRA. As of the day of testifying, December 13, 2018, there were 3,681 OPRA requests made to the city. She indicates that she gets minimal help from other deputy clerks. She said there are two part time and two full time people who also help respond to OPRA requests, but they do not do that exclusively. They work the counter at the city clerk's office and much of their time involves marriage licenses and preparing the city council agenda.

She looked at P-2 the initial OPRA request made by the plaintiffs. She said that it asked for "all" documents and she said that request simply sought too much and therefore she sent an email asking for more specific requests. She remembers that the next event was her conversation with Mr. Cook on August 17, 2018. She acknowledged that he originally left a voice mail for her.

During that conversation she told Mr. Cook to look at the city's website where certain information could be found to help make the request more specific. It did not appear that Ms. McNulty recalled the conversation in great detail. She referred to P-7 sent August 15, 2018, in which she asked the plaintiffs to narrow the scope and the dates. She indicated she did receive

P-9 but it involved twenty-seven ordinances hence twenty-seven properties and that it asked for a lot of material for each of the twenty-seven properties. She testified she did not know how long this request would take to fulfill. She denied this request as overly burdensome. She testified that on average it takes between fifteen and twenty minutes to go through each of these ordinances and thus for twenty-seven ordinances it would take seven to eight hours to fulfill OPRA request #2. She indicated that in addition to going through the ordinance files themselves, there were requests for other matters such as emails and memorandums. She said she could not get the emails without the names, date range and subject matter. She said that regarding communications between the mayor and the JCRA it would be time consuming to obtain those materials. She therefore, on September 12, 2018, denied OPRA request #2 as being disruptive to agency operations. Regarding OPRA request #1 (One Journal Square) and OPRA request #3 (915 Pavonia Ave.) she testified that Lorraine Cecchini of the clerk's office handled those matters. She testified that she discussed those matters with Ms. Cecchini and how burdensome it would be to fulfil those requests and so informed the plaintiffs.

She was cross-examined. She testified that the number of OPRA requests goes up each year and the number of clerk's office employees has gone down. She admits the mayor's office was not contacted regarding subpart F of OPRA request #2. She testified that the law department was also involved in the decision to deny these requests. Regarding revised OPRA request #1 which pertained to only one specific piece of property and only regarded materials related to tax credits or similar accommodations, she could not recall if anyone at her office told her more time was needed to respond to OPRA request #1. She was not aware of anyone talking to the plaintiffs regarding OPRA request #1 before the flat denial, apparently made by Lorraine Cecchini.

Regarding OPRA request #2 she was not sure exactly of the conversation with Mr. Cook. She did indicate that in writing she requested the plaintiffs to narrow the date range from its original ten years. She's not sure if she asked Mr. Cook for the block and lot number but probably asked for the street address. She did agree that she asked for more specific information. Regarding the revised OPRA request #2 (P-9) she acknowledged that it went back only four years now and that it gave the addresses and ordinances numbers and it was limited only to twenty-seven specific properties. She acknowledged that P-10 dated September 12, 2018, which was a flat denial was sent out only the day after P-9 (the revised OPRA request #2) was received. She did not recall speaking to anyone in the mayor's office and admits not deciding how much time it would take to fulfill P-9. She acknowledged that she could have spent fifteen minutes a day for twenty-seven days and probably could have fulfilled the request in P-9. The court inquired of Ms. McNulty if she actually looked into any of those twenty-seven files to see if the documents requested in subparts A-G, may have been contained within those files, thus making the job much easier. She indicated she apparently did not look into any of those files.

The court is well satisfied that the documents requested in OPRA request #1 (P-3) were readily identifiable records subject to disclosure under OPRA. No one contended that any of the exceptions applied. There was a time limitation going back only for the last ten years and it applied only to one particular piece of property (block and lot number were given) and it related only to tax abatements and similar specifically identified matters. The same applies to OPRA request #3 (P-5). While P-9 was somewhat different in that it included twenty-seven separate

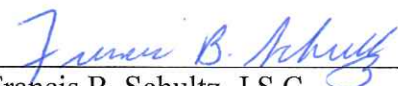
properties that request involved a shorter time frame (last four years) and readily identifiable documents. None of the three requests required discretion or “research” on the part of the defendants and these are not the type of documents which would have required a search that would have interrupted the agency operations. Even if they did (which they did not) the defendants did not attempt to reach a reasonable solution that would accommodate the interests of the requester and the agency. MAG v. Division of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) citing N.J.S.A. 47:1A-5(g).

The court agrees with the plaintiffs that no real effort was made by the defendants to locate the requested documents. Ms. McNulty’s testimony, while essentially credible, reflected an unwillingness to attempt to retrieve those documents because it required too much time in her opinion. She did testify “my understanding of an OPRA request is something brief and concise”. There is nothing in the OPRA Statute or the developing case law that coincides with her opinion of an OPRA request. The request need not be brief and need not be concise, it is sufficient that it be a document that is readily identifiable, not subject to an exception, fit within the definition of government records and not be so expansive that it would disrupt agency operations.

The court is satisfied that the plaintiffs are entitled to all of the documents requested and should be considered the “prevailing party”.

The following should be added however. It is clear from Ms. McNulty’s credible testimony that she puts in a full day’s work at her office, often skips lunch and works overtime. The problem is that Jersey City is not providing enough staff to accommodate the OPRA requests that it receives. It is for this reason that under the “totality of the circumstances” portion of N.J.S.A. 47:1A-11, no action should be taken against any of the clerks directly involved in this matter.

The City will provide the documents requested in P-3, P-5 and P-9 within twenty days. An order accompanies this letter opinion.


Francis B. Schultz, J.S.C.